

MAURA K. BAGHDADI  
VINCENT J. CURTIS, JR.  
ROBERT A. DePONT  
THOMAS J. DOUGHERTY, JR.  
JAMES G. ENNIS  
ANNE E. GOODWIN  
RICHARD HILDRETH  
EDWARD W. HUMMERS, JR.  
FRANK R. JAZZO  
BARRY LAMBERGMAN  
PATRICIA A. MAHONEY  
GEORGE PETRUTSAS  
ROBERT D. PRIMOSCH  
LEONARD R. RAISH  
JAMES P. RILEY  
JULIE E. RONES\*  
MARVIN ROSENBERG  
STEPHEN R. ROSS  
ESTELLA SALVATIERRA  
TIMOTHY R. SCHNACKE\*\*  
LONNA M. THOMPSON  
\*ADMITTED IN PENNSYLVANIA ONLY  
\*\*ADMITTED IN KANSAS ONLY

FLETCHER, HEALD & HILDRETH

ATTORNEYS AT LAW

SUITE 400, 1225 CONNECTICUT AVENUE, N.W.

WASHINGTON, D.C. 20036-2679

(202) 828-5700

TELECOPIER NUMBER

(202) 828-5786

PAUL D.P. SPEARMAN  
(1936-1982)  
FRANK ROBERSON  
(1936-1961)

RETIRED

RUSSELL ROWELL  
EDWARD F. KENEHAN  
ROBERT L. HEALD  
FRANK U. FLETCHER

SPECIAL COUNSEL

JAMES L. HOFFMAN, JR.

TELECOMMUNICATIONS CONSULTANT

HON. ROBERT E. LEE

WRITER'S NUMBER

(202) 828-

5738

November 6, 1990

RECEIVED  
REC'D MAIL ROOM BUR

NOV 9 1990

NOV 6 - 1990

Federal Communications Commission  
Office of the Secretary

VIDEO SERVICES

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

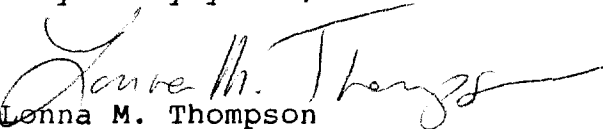
Re: Valley Public Television, Inc.  
File No. BPET-900904KF  
Bakersfield, California

Dear Ms. Searcy:

Transmitted herewith, on behalf of Valley Public Television, Inc., applicant for a construction permit for a new noncommercial educational television station on Channel \*39 at Bakersfield, California, are an original and four copies of its "Opposition to Petition to Deny" in the above-referenced matter.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,

  
Lonna M. Thompson  
Counsel for  
Valley Public Television, Inc.

LMT/mac

Enclosures

118

ORIGINAL

BEFORE THE

**Federal Communications Commission**

RECEIVED

WASHINGTON, D.C. 20554

NOV 6 - 1990

Federal Communications Commission  
Office of the Secretary

In re Application of )  
 )  
VALLEY PUBLIC TELEVISION, INC. ) File No. BPET-900904KF  
 )  
For a Construction Permit for )  
a New Noncommercial Educational )  
Television Station on )  
Channel \*39, Bakersfield, CA )

Directed to: Chief, Mass Media Bureau

OPPOSITION TO PETITION TO DENY

Valley Public Television, Inc. ("Valley"), by its attorneys, hereby submits its opposition to the petition to deny or dismiss filed by Community Television of Southern California ("Community") regarding Valley's application for a new noncommercial educational television station on Channel \*39, in Bakersfield, California. Community alleges that Valley's application should be dismissed for three reasons, all of which are without basis. Community's opposition is yet another attack against Valley's long-standing efforts to serve the Bakersfield area with educational television programming.<sup>1/</sup>

---

<sup>1/</sup> Community, in seeking to block Valley's efforts to bring over-the-air educational television service to Bakersfield, has filed similar petitions against Valley's applications for a television translator station on Channel 36 (File No. BPTT-JC0624QF) and on Channel 65 (File No. BPTT-8912084Q) in Bakersfield.

1. Community contends that the facilities on Channel \*39 proposed by Valley are short-spaced to the reference point coordinates of educational Channel \*25 in Ridgecrest, California<sup>2/</sup> and, therefore, would violate the "taboo" mileage separation requirements of Section 73.698 of the Rules.<sup>3/</sup> At the time it filed its application, Valley did not know it had a spacing question. In fact, it had chosen to locate at an existing antenna farm to obtain maximum coverage and substantial savings in costs, and to avoid any receiving antenna orientation problems. Valley would have superior coverage as compared to the proposed facilities of Community, as Valley would serve 421,000 persons and cover 12,370 sq. km., and Community would serve 332,293 persons and cover 8,932 sq. km. Nevertheless, because Valley did not request a short-spacing waiver, Community

whose operations Valley's operation would interfere. The reference coordinates represent a theoretical point of placement. Should a station begin operating on Channel \*25, the location of the station would most certainly not be at the reference point. The attached Engineering Exhibit of Moffet, Larson & Johnson, Inc. shows that there are, in fact, many locations in Ridgecrest in which a station could be located and fully operated without any short spacing to Valley's proposed facilities on Channel \*39.

3. Secondly, it is unclear whether Channel \*25 or Channel \*41 will be the Ridgecrest allocation. In MM Docket 85-390,<sup>4/</sup> the Commission proposed reallocating Channel \*25 to Ventura and substituting Channel \*41 for Channel \*25 in Ridgecrest. Although the Commission's Report and Order did not adopt this proposal,<sup>5/</sup> the Order is subject to reconsideration. Therefore, whether or not Channel \*41 will be dropped into Ridgecrest and Channel \*25 deleted is still uncertain. Additionally, Channel \*41 is available for allocation to Ridgecrest in any event.

4. Therefore, Valley's Channel \*39 short-spacing to Channel \*25 is theoretical only, and in reality both stations (with either Channel \*25 or Channel \*41 at Ridgecrest) could co-exist. Should, however, the Commission follow the position that

---

<sup>4/</sup> Notice of Proposed Rule Making, MM Docket No. 85-390, 50 Fed. Reg. 52806, published December 26, 1985.

<sup>5/</sup> Report and Order, MM Docket No. 85-390, FCC 87-297, released September 30, 1987.

Valley needs a waiver of Section 73.610 of the Rules regarding short-spacing to the Channel \*25 reference points, then Valley is requesting a waiver. Valley will be filing shortly an Amendment and Request for Waiver to support Valley's Channel \*39 application.

5. Community argues that because Valley's application did not include such a waiver request at the time of filing, Valley's application must be dismissed as "patently defective." Both case law and public interest concerns prove Community wrong. The only authority Community cites for its requested heavy-handed measure is Family Television, Inc., 85 F.C.C.2d 986 (1981), which is inapposite to the case at hand. In Family Television, the applicant was put on notice several times that its proposed site was inadequate because of short-spacing; however, the applicant did not attempt to amend its application until after dismissal, and the amendment was a major change. The applicant argued that because it was inexperienced, it should not be held to standards equal to that of other applicants. Such is not the case here. There is legitimate uncertainty surrounding the Channel \*25 coordinates. And, as timely as possible, Valley is amending its application to request waiver of Rule 73.610, if the Commission finds such a waiver is necessary.

6. Case law shows that the Commission wisely permits applicants to amend their applications to request short-spacing waivers if the public interest is furthered. For example, in

Pappas Telecasting, Inc., 49 R.R.2d 1688 (1981), the Commission waived the short-spacing of a proposed new site of an existing station that would be mutually exclusive with the proposed site of another existing station (the former station's application had been dismissed previously by the Bureau as inadvertently accepted for filing in violation of the short-spacing rules). The Commission found that the public interest required waiver of the short-spacing rules, as the proposal would give many more persons their first non-network signal as compared to those who would lose their only such service. Here, only an unused allocation is involved.

7. Similarly, Valley's proposed station's short-spacing to the reference point of Channel \*25 should be allowed since to do so would further the public interest. Valley's application proposes first time educational service to the residents of Bakersfield. Extension of Valley's service into the Bakersfield area would allow reception to an estimated 150,000 persons currently deprived of signals due to mountain and coastal ranges.<sup>6/</sup> Further, there is no detriment to allowing Valley's proposed short-spacing as no one is currently receiving service from Channel \*25 who would be deprived of such service, nor are there any environmental concerns, or any other potential negative effects. In fact, Channel \*25 has been allotted to

---

<sup>6/</sup> Mass Media Bureau Letter to Community Television of Southern California, July 25, 1990, p. 3.

Ridgecrest since February 9, 1966 (effective March 28, 1966) without any interest shown by anyone in operating there.<sup>7/</sup>

8. Although Community's mutually exclusive application for service to this area is also pending, the Commission has recognized that the public interest is best served by choice of the better of mutually exclusive applications. Valley, therefore, should not be deprived of competing for the channel in order to serve the public interest, but rather, should be granted a short-spacing rule waiver if the Commission determines a waiver is necessary.

II. Valley's Request for a Waiver of the ATV Freeze Is Fully Adequate

9. Community argues that Valley's Channel \*39 application's request for a waiver of the Advanced Television Systems ("ATV") freeze<sup>8/</sup> is inadequate because Valley relies upon the Bureau's reasoning set forth in a letter responding to Community's request for waiver of the ATV freeze.<sup>9/</sup> Community is incorrect, as the Bureau's reasoning for granting the waiver set forth in the letter applies equally to Valley's application. Therefore, Valley was justified in requesting a waiver on that basis.

---

<sup>7/</sup> Channel \*25 was substituted for Channel \*42, which had been allotted to Ridgecrest since June 4, 1965.

<sup>8/</sup> Order, Advanced Television Systems, MM Docket No. 87-268, FCC No. 4074, July 16, 1987.

<sup>9/</sup> See footnote 6, supra.

10. Contrary to Community's assertions, the Bureau did not grant Community's waiver request solely on the basis of, as Community states, its "thorough engineering showing." Rather, the Bureau decided to examine generally whether the public interest would be served better by placing a noncommercial station in Bakersfield rather than keeping the channel clear because of potential ATV use in Los Angeles. As the Bureau stated, "(W)e think it is appropriate to evaluate whether sufficient public interest factors are present to warrant utilization of Channel \*39 in Bakersfield." The Bureau found that the public interest would better be served by service to approximately 150,000 persons in the Bakersfield area than by keeping the spectrum available for ATV use.

11. Thus, it was in light of the importance of educational service to the Bakersfield area that the Bureau granted the waiver. However, assuming arguendo that Community is correct and the Bureau granted the waiver solely on the persuasiveness of Community's engineering, the two points made by Community's that are discussed in the letter are equally applicable to the proposed facilities of Valley. The letter noted that Community argued that (1) Channel \*39 in Los Angeles is already unusable because of Channel \*39 operating in San Diego, and (2) the Tehachapi mountain range, 6,00-8,000 feet in elevation, would block the propagation of signals between Los Angeles and Bakersfield. These two factors are constants and are not elements unique to Community's waiver request. Even if these



factors were key in the Bureau's reasoning, which Valley believes they were not, the factors are equally true in Valley's case. It is clear, however, that the Bureau decided the waiver based upon larger, overall policy considerations of putting an educational station into operation in Bakersfield, which reasoning applies equally to both applicants.

III. Valley Did Not Violate The Commission's Ex Parte Rules

12. Community argues that Valley's Channel \*39 application should be denied because Community alleges that Valley solicited ex parte contacts in an entirely different matter. Community alleges that ex parte violations occurred in 1989 regarding a television translator application that Valley had pending for Channel 36 in Bakersfield. Community has made this specious argument previously in petitions to deny Valley's translator applications for Channels 36 and 65. As Valley has shown previously, there is no basis for this charge.

13. What Community fails to acknowledge in all of these arguments is that the letters from Valley to Congressmen cited as solicitations of ex parte violations either (1) took place prior to the Channel 36 petition becoming a contested proceeding,<sup>10/</sup> or (2) are letters in which Valley requested that any Congressional contacts to FCC personnel be served upon

---

<sup>10/</sup> In order to find the Channel 36 translator application a "contested" proceeding, one must find that Community had standing to file its petition to deny Valley's Channel 36 translator application, a supposition that Valley contends is erroneous.

Community. This point is thoroughly discussed in the Valley Public Television, Inc. October 1, 1990 Opposition to Petition to Deny, pp. 6-9, filed in the Valley Channel 65 translator proceeding (a copy of which is attached hereto). Although Community knows its citation of those letters is a distortion of the truth, it continues to do so, without regard for the integrity of the Commission's processes.

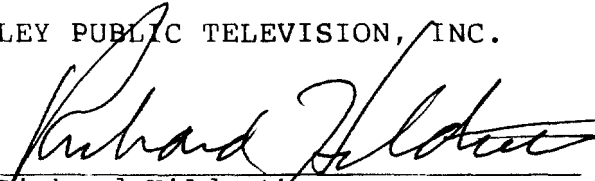
CONCLUSION

The contentions raised by Community in its petition to deny Valley's Channel \*39 application are without merit. Therefore, Community's petition should be dismissed as without basis, and Valley's Channel \*39 application should go forward.

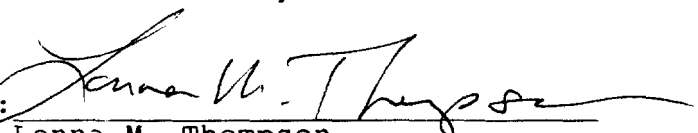
Respectfully submitted,

VALLEY PUBLIC TELEVISION, INC.

By:

  
Richard Hildreth

By:

  
Lonna M. Thompson

Its Attorneys

FLETCHER, HEALD & HILDRETH  
1225 Connecticut Avenue, N.W.  
Suite 400  
Washington, D.C. 20036-2679  
(202) 828-5700

November 6, 1990

MAC/LMT/15/VPTI.OPP

ENGINEERING REPORT

**MOFFET, LARSON & JOHNSON, INC.**

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

---

ENGINEERING EXHIBIT

IN SUPPORT OF THE APPLICATION BY

VALLEY PUBLIC TELEVISION, INC.

FOR A

NON-COMMERCIAL BROADCAST STATION

IN

BAKERSFIELD, CALIFORNIA

FCC FILE NUMBER BPET-900904KF

November 5, 1990

**MOFFET, LARSON & JOHNSON, INC.**

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

---

Valley Public Television, Inc.  
Bakersfield, California

ENGINEERING STATEMENT

This Engineering Exhibit has been prepared on behalf of Valley Public Television, Inc. (VPT), an applicant for a new non-commercial broadcast station in Bakersfield, California (FCC File Number BPET-900904KF), in response to a Petition To Deny filed by Community Television of Southern California.

Community Television of Southern California correctly states that the proposed VPT transmitter site is 9.8 kilometers short-spaced to the city reference coordinates of an unused Channel \*25 allotment at Ridgecrest, California. Exhibit 1 is an allocation study for Channel \*25 at Ridgecrest, California. Exhibit 2 shows the permissible site area for the Channel \*25 allotment and the restriction that the VPT proposal would place on the Channel \*25 site area. As shown on Exhibit 2, grant of the VPT proposal would not preclude the use of Channel \*25 at Ridgecrest and an ample permissible site area would remain to the east of Ridgecrest.

Exhibit 3 is an allocation study for Channel 41 at Ridgecrest, California which would be available for use at the Ridgecrest city reference coordinates.

Moffet, Larson, & Johnson, Inc.

Page: 1

Date: 11/05/90

Study Name : Ridgecrest, California

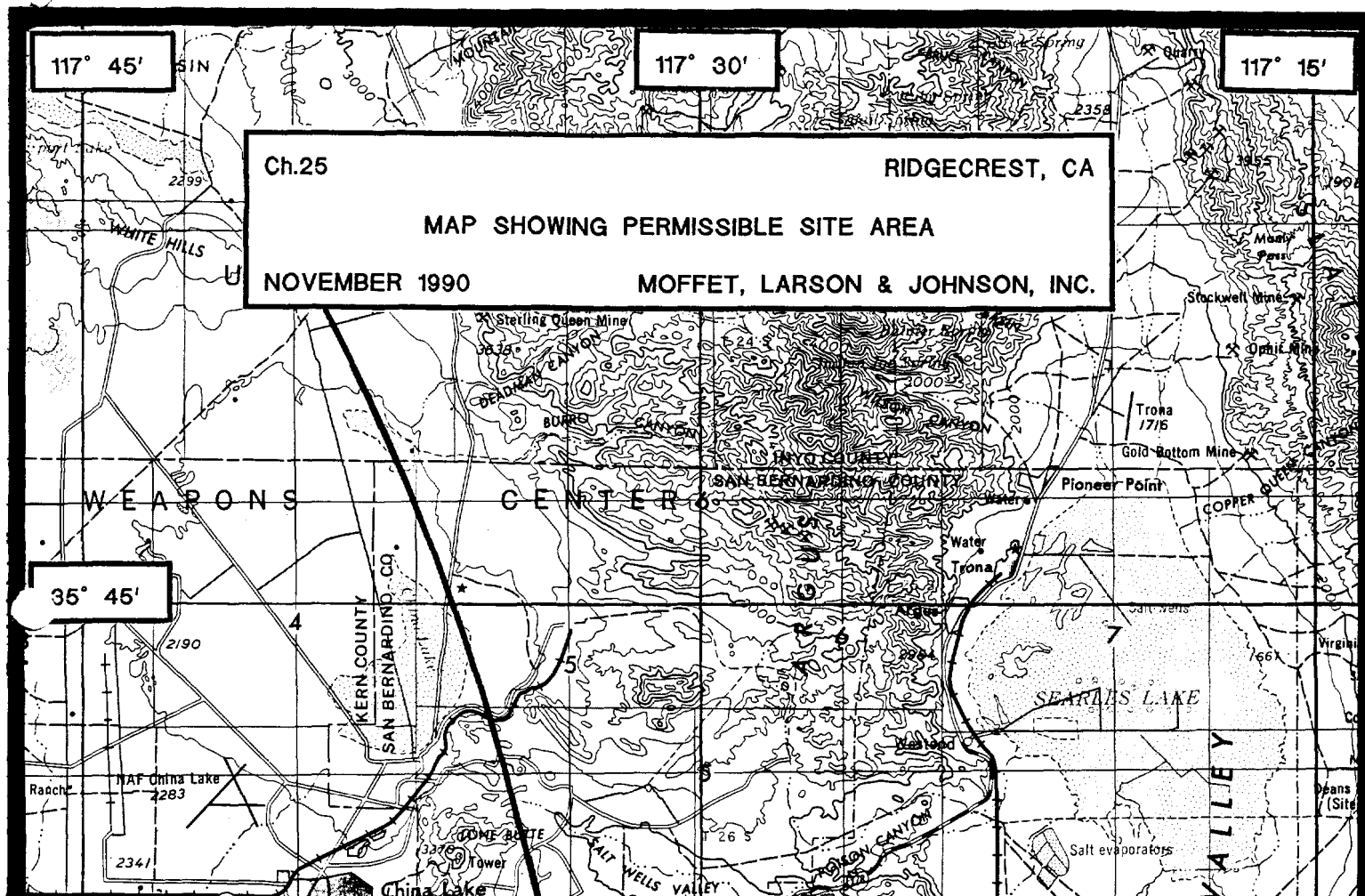
Channel : 25n

Coordinates : N 35 37 30.0 W 117 40 12.0

Separations : TV Zone 2 - Full Service

Call	City	&	State	Stat	File - number	Chan	ERP	HAAT	Zn	Latitude	Longitude	Bear	Dist	Req'd	Clear
													--- kilometers ---		
KGET	BAKERSFIELD		CA	LIC	BLCT 790529KF	17z	5000	1400	2	35 26 20.0	118 44 23.0	258.2	99.19	31.4	67.79
KSCI	SAN BERNARDINO		CA	LIC	BLCT 2579	18-	3334	2380	2	34 11 15.0	117 41 53.5	180.9	159.49	95.7	63.79
KEROTV	BAKERSFIELD		CA	LIC	BMLCT 305	23-	1760	3700	2	35 27 14.0	118 35 37.0	257.4	85.88	31.4	54.48
	RIDGECREST		CA	ALC		* 25z			2	35 37 30.0	117 40 12.0	239.9	.00	280.8	-280.8
KMPH	VISALIA		CA	LIC	BMLCT 781115KF	26+	2950	2730	2	36 17 12.0	118 50 20.0	305.3	128.49	87.7	40.79
KMPH	VISALIA		CA	CPM	BMPCT 891114KE	26+	3214	2570	2	36 40 2.0	118 52 42.0	317.2	158.74	87.7	71.04
KBAKTV	BAKERSFIELD		CA	LIC	BLCT 2317	29z	1700	3730	2	35 27 11.0	118 35 25.0	257.3	85.61	31.4	54.21
NEW	BAKERSFIELD		CA	APP	BPET 900904KF!	* 39-	162	3596	1	35 27 14.0	118 35 37.0	257.4	85.88	95.7	-9.82
NEW	BAKERSFIELD		CA	APP	BPET 881012KE!	* 39-	310	1332	2	35 26 17.0	118 44 23.0	258.2	99.21	95.7	3.51
	BAKERSFIELD		CA	ALC		* 39-			2	35 22 31.0	119 1 16.0	257.6	125.68	95.7	29.98
KTBNV	SANTA ANA		CA	LIC	BLCT 830418KH	40z	631	2890	2	34 13 27.0	118 3 44.0	193.0	159.48	119.9	39.58

EXHIBIT 1



Moffet, Larson, & Johnson, Inc.

Page: 2

Date: 11/05/90

Study Name : Ridgecrest, California  
Channel : 41n  
Coordinates : N 35 37 30.0 W 117 40 12.0  
Separations : TV Zone 2 - Full Service

Call	City	&	State	Stat	File - number	Chan	ERP	HAAT	Zn	Latitude	Longitude	Bear	Dist	Req'd	Clear
--- kilometers ---															
D86-172	LOS ANGELES		CA	PADD		26z				1 34 3 15.0	118 14 28.0	196.8	181.92	119.9	62.02
KMPH	VISALIA		CA	LIC	BMLCT 781115KF	26+	2950	2730	2 36 17 12.0	118 50 20.0	305.3	128.49	119.9		8.59
KMPH	VISALIA		CA	CPM	BMPCT 891114KE	26+	3214	2570	2 36 40 2.0	118 52 42.0	317.2	158.74	119.9		38.84
KMEXTV	LOS ANGELES		CA	LIC	BLCT 790118LF	34z	1950	2940	2 34 13 35.0	118 3 56.0	193.2	159.31	95.7		63.61
NEW	BAKERSFIELD		CA	APP	BPET 900904KF1	* 39-	162	3596	1 35 27 14.0	118 35 37.0	257.4	85.88	31.4		54.48
NEW	BAKERSFIELD		CA	APP	BPET 881012KE1	* 39-	310	1332	2 35 26 17.0	118 44 23.0	258.2	99.21	31.4		67.81
KTBNTV	SANTA ANA		CA	LIC	BLCT 830418KH	40z	631	2890	2 34 13 27.0	118 3 44.0	193.0	159.48	87.7		71.78
	YOSEMITE VALLEY		CA	ALC		41z			2 37 44 42.0	119 35 12.0	324.6	291.02	280.8		10.22
KDOBTV	BAKERSFIELD		CA	LIC	BLCT 881229KF	45+	5000	1325	2 35 26 20.0	118 44 24.0	258.2	99.22	31.4		67.82
KDOCTV	ANAHEIM		CA	LIC	BLCT 821028KF	56-	2820	2390	2 34 11 14.0	117 42 1.0	181.0	159.52	119.9		39.62

EXHIBIT 3

ENGINEERING REPORT

MOFFET, LARSON & JOHNSON, INC.

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

Valley Public Television, Inc.  
Bakersfield, California

A F F I D A V I T

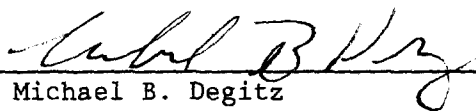
COUNTY OF FAIRFAX )  
 ) SS:  
COMMONWEALTH OF VIRGINIA )

MICHAEL B. DEGITZ, being duly sworn upon oath deposes and says:

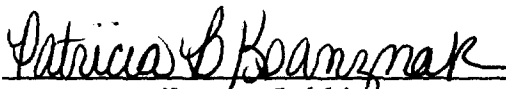
That he is corporate secretary of the firm of Moffet, Larson & Johnson, Inc., consulting telecommunications engineers;

That this firm has been retained by Valley Public Television, Inc. to prepare this engineering statement;

That he has either prepared or directly supervised the preparation of all technical information contained in this engineering statement; and that the facts stated in this engineering statement are true of his knowledge, except as to such statements as are herein stated to be on information and belief, and as to such statements he believes them to be true.

  
Michael B. Degitz

Subscribed and sworn to before me this 5th day of November, 1990

  
Notary Public





ENGINEERING REPORT

MOFFET, LARSON & JOHNSON, INC.

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

Valley Public Television, Inc.  
Bakersfield, California

A F F I D A V I T

COUNTY OF FAIRFAX                    )  
  ) SS:  
COMMONWEALTH OF VIRGINIA         )

WALLACE E. JOHNSON, being duly sworn upon oath deposes and says:

That his qualifications are a matter of record with the Federal Communications Commission;

That he is a registered professional engineer in the Commonwealth of Virginia and the District of Columbia and is the President of the firm of Moffet, Larson & Johnson, Inc.;

That this firm has been retained by Valley Public Television, Inc. to prepare this engineering statement;

That he has either prepared or directly supervised the preparation of all technical information contained in this engineering statement; and that the facts stated in this engineering statement are true of his knowledge, except as to such statements as are herein stated to be on information and belief.

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

PLEASE STAMP  
AND RETURN  
THIS COPY TO  
FLETCHER HEATH & HILDBETH

In re Application of )  
 )  
VALLEY PUBLIC TELEVISION, INC. )  
 )  
For Construction Permit for a )  
New Television Translator )  
Station on Channel 65 )  
Bakersfield, California )

File No. BPTT-8912084Q

RECEIVED

077 - 1100

Federal Communications Commission  
Office of the Secretary

Directed to: Chief, Mass Media Bureau

**OPPOSITION TO PETITION TO DENY**

Valley Public Television, Inc. ("Valley"), by its  
attorneys, hereby submits its opposition to the petition to deny  
filed by Community Television of Southern California  
("Community") regarding Valley's application for a new  
television translator for Channel 65 in Bakersfield, California

Inc. ("White Sage") for Channel 65 in San Fernando, California, as amended (File No. BPTTL-8912083Y). Secondly, Community contends that Valley willfully and repeatedly solicited ex parte violations in an entirely different proceeding which Community argues should disqualify Valley as a Commission licensee. Community also demands that Valley's application be put in a lottery with White Sage's application and that a hearing be held on Valley's character qualifications.

2. Both of Community's contentions are based on a deliberate falsification of facts and blatantly erroneous reasoning. Community's demands for a lottery and a hearing are heavy-handed attempts to thwart Valley's efforts to bring to the Bakersfield area its first over-the-air educational programming. Since, with only a little diligence, Community easily could have determined the accurate facts involved in the contentions Community raises in its petition, it is abundantly clear that Community has once again directed its vile efforts toward unseemly means of trying to prevent Valley's service to the people of Bakersfield. By its own admission, Community's efforts are motivated purely by monetary greed and a dictatorial insistence that it be the only public television signal carried into Bakersfield (see Community's discussion of standing, p. 3 of its petition).

I. Community Does Not Have Standing

3. Community does not have standing to object as it is not a licensee in Bakersfield nor does it provide an off-the-air

signal to Bakersfield. The limited cable carriage of KCET into Bakersfield is hardly a sufficient interest to create standing. Further, its claim of an NTIA award priority for its pending Channel 39 television application as a first service to Bakersfield is blatantly spurious since funding applications

the attached Engineering Statement of Moffet, Larson & Johnson, Inc. (Exhibit 1) makes clear, Community's reasoning and the engineering report on which it has relied are incorrect for two reasons.

6. First, Community deliberately ignores the amendment Valley filed on June 25, 1990, changing the frequency offset specified in its Bakersfield application from "no offset" to "plus offset" (a copy of which is attached hereto as Exhibit 2). Further, neither Community's petition nor its engineering statement address the patently obvious fact that the White Sage proposal has a "minus offset" (a copy of the pertinent portion of White Sage's amendment is attached hereto as Exhibit 3). As the Moffet, Larson & Johnson statement discusses, the engineering analysis in Community's petition is based on the false assumption that the Valley and White Sage proposals do not specify frequency offset. However, given the plus offset of Valley's proposal and the minus offset of White Sage's proposal, no prohibited overlap will occur.

7. Secondly, the Community engineering statement uses an incorrect height of the antenna radiation center. The height used for its calculation is 2,994 meters. The actual height specified in Valley's application is 2,294 meters (a copy of that portion of Valley's application is attached hereto as Exhibit 4). This is a difference of 700 meters.<sup>3/</sup> This error

---

<sup>3/</sup> It is interesting to note that on August 31, 1989, Community filed a petition to deny Valley's television  
(continued...)

also contributed to the painfully incorrect results of Community's engineering analysis.

8. As the attached Moffet, Larson & Johnson, Inc. Engineering Statement concludes, there is a clearance of 13.1 kilometers between the contours of the two proposed

August 31, 1989 (File No. BPTTL-JC0624QF). Community concludes that Valley's alleged ex parte solicitations constituted "willful and repeated" violations of the Commission's Rules, which raise "serious questions" as to Valley's character qualifications (Community petition, p. 11).

10. Section 1.1202(b) of the Commission's Rules defines an ex parte presentation as a presentation on the merits made to a decision-making FCC person in a restricted (in this case, a contested) proceeding that is not served on the parties to the proceeding.<sup>5/</sup> The rules prohibit soliciting such ex parte presentations. The rules request service of such presentations in restricted proceedings on other parties to the proceeding so that "decisions are fair and impartial and based on a public record free of influence from non-record communications between decisionmakers and outside persons." Pepper Schultz, 66 R.R.2d 1760, 1773 (1980).

11. Community's petition includes letters written by Congressmen to the FCC to advance Valley's Channel 36 proposal, including letters from Representatives Gary Condit, Richard H. Lehman, and Charles Pashayan and from Senator Pete Wilson. Community also includes the letters written by Colin Dougherty, General Manager of Valley's Fresno Channel 18 station to Congressman Pashayan and Senator Wilson regarding the Channel 36 translator application. Community contends that its petition to

---

<sup>5/</sup> Community has copies of the letters. Thus, it is hardly ignorant of those letters.

deny, filed August 31, 1989, against Valley's application rendered it a "restricted" proceeding.<sup>6/</sup>

12. Once again, Community's contentions rest upon erroneous facts. Valley did not solicit ex parte contacts. In fact, Valley made its best efforts to assure that members of Congress contacted regarding the Channel 36 translator would serve any presentations made to FCC personnel on Community. It was never Valley's intent that Congressional contacts to FCC personnel would be made ex parte. In fact, Valley's intent was exactly opposite.

13. The letter Community includes from Colin Dougherty to Congressman Pashayan makes this fact clear. That letter (attached hereto as Exhibit 5) specifically requests that the Congressman serve Community. The concluding sentence of the letter states, "We are asking for your support now to petition the FCC to grant KMTF's application for a translator for Kern County, and that you inform KCET of your actions" (emphasis added). The letter Community includes from Colin Dougherty to Senator Wilson (a copy of which is attached hereto as Exhibit 6) was written on June 9, 1989, prior to the time the application became a restricted proceeding (August 31, 1989).<sup>7/</sup>

---

<sup>6/</sup> Again, as Valley has previously stated, Community lacks standing to file the Channel 36 petition and the petition, therefore, cannot cause the Channel 36 application to become a restricted proceeding.

<sup>7/</sup> For some inexplicable reason, the copy of the letter included in Community's petition does not include the date of Mr. Dougherty's letter to Senator Wilson. The attached copy includes the date.



14. As the attached declaration of Colin Dougherty attests, there was no intent on Valley's part for the Congressional persons to make ex parte presentations. Rather, both Valley and counsel for Valley made best efforts to ensure service of any Congressional presentations on counsel for Community. In fact, counsel for Valley served at least one of these Congressional letters (Congressman Pashayan's November 22, 1989 letter) of which it became aware on counsel for Community (see Exhibit 7 hereto) (a fact which Community conveniently ignores).

15. If Valley had any intent to solicit ex parte presentations, it would have made no sense for Valley to request Congressional service on Community. In fact, on another occasion, Community was served through Valley's counsel. Valley had no such intent and Valley took precautions to avoid ex parte presentations.

16. Lastly, it is curious that Community argues that any Congressional intervention going to the merits or outcome of an adjudicatory proceeding is impermissible (see Community petition, p. 9). If such is the case, Community itself is in violation of the ex parte rules regarding its application for noncommercial television Channel 39 in Bakersfield.<sup>8/</sup>

---

<sup>8/</sup> This application was filed earlier and was recently reinstated (File No. BPET-881012KE). Valley filed a mutually exclusive application both originally (File No. 881230KG) and recently (File No. BPET-900904KF), which rendered Community's Channel 39 application a restricted proceeding.